



City of Seattle

Department of Planning and Development
D.M. Sugimura, Director

**CITY OF SEATTLE
ANALYSIS AND DECISION OF THE DIRECTOR OF
THE DEPARTMENT OF PLANNING AND DEVELOPMENT**

Application Number: 3006967
Applicant Name: Carl Haglund
Address of Proposal: 1019 California Lane SW

SUMMARY OF PROPOSED ACTION

Land Use Application to allow a clustered housing development of two, 3-story single family residences in an environmentally critical area. Parking for four vehicles to be provided within the structures. Existing structures to be demolished. SEPA review includes consideration of future unit lot subdivision (Unit Lot Subdivision to be under separate application).

The following approval is required:

Environmentally Critical Areas Administrative Conditional Use - to allow more than one structure on a single lot in an Environmentally Critical Area in a Single-Family zone.
SMC 25.09.260

SEPA - Environmental Determination - SMC Chapter 25.05.

SEPA DETERMINATION: ☐ Exempt ☐ DNS ☐ MDNS ☐ EIS
☒ DNS with conditions
☐ DNS involving non-exempt grading or demolition or
involving another agency with jurisdiction.

BACKGROUND DATA

Site and Vicinity Description

The approximately 22,763 square foot site is located on the west side of California Way SW. Access is from California Lane SW, which extends from California Way SW to the southwest where it also provides access to numerous other parcels.

The site is on the extensive sloped area that forms the bluffs above Duwamish Head and Alki and Harbor Avenues, which are downhill from the site. Consequently, the site contains extensive areas of designated *Environmentally Critical Areas (ECA)*, *Steep Slope* and *Landslide Prone*. The *steep slope* areas and their required *steep slope buffers* extend along the length of the east and west property boundaries and largely encircle the central non-ECA and less steep portion of the site.

The site and surrounding parcels are zoned Single Family 7200 (SF 7200). The surrounding parcels, where developed, contain residential structures of a variety of ages and sizes. Downhill along Alki and Harbor Avenues the zoning is Mid-Rise Multi-Family (MR).

Proposal

The proposal is to construct two single family structures on one single-family lot in a Single-Family 7200 zone (SF 7200). The structures would be located side by side and parallel to the slope. The footprint of proposed Residence “B” (to the southwest) would be less than 50 percent into the *Steep Slope* and associated 15-foot buffer; the footprint of proposed Residence “A” would be approximately two-thirds into the *Steep Slope* and associated 15-foot buffer. The remainder of both structures would be located in the central non-ECA and less steep portion of the site. Both proposed residences would have vehicle access from California Lane.

More than one single-family structure may be allowed on a single lot in a Single-Family zone under the provisions of Environmentally Critical Areas Administrative Conditional Use (SMC 25.09.260) when a proposal meets the criteria of this Code section. This ACU process allows a property owner to utilize (recover) the development credit for the number of possible lots that could otherwise be allowed through the short plat process for a parcel of its size in its zone, but that cannot be utilized due to the presence of an ECA (SMC 25.09.240.E, Short Subdivisions and Subdivisions in ECA’s). Because typically only one dwelling unit may be allowed on a single-family lot, recovery of development credit allows construction of up to the number of dwelling units that would be allowed on a lot of a given size through the short plat / subdivision process.

The subject site is approximately 22,763 square feet in area and contains enough area for three 7,200 square foot lots under non-ECA conditions. This proposal is a revision of an original proposal (DPD MUP # 2107965) that sought to construct three single-family structures. Because that project was revised to remove one structure and redesign the remaining two, a new DPD project number was created.

Unit Lot Subdivision under SMC 23.24.045 is planned under a separate MUP application to allow the fee-simple sale of each single-family structure after construction.

Public Comment

The two-week public comment period began July 31, 2008 and was extended for an additional two weeks by public request until August 27, 2008. Numerous comments were received and are summarized below:

- The subject site and surrounding hill side are extremely steep and unstable. Portions have slid over the years resulting in hill-side erosion that continues today.
- Because of the above hill side conditions no work should be allowed during the predominately rainy season.
- No trees should be cut on the surrounding public property. No tree removal on the site should occur except as determined to be minimally necessary and allowed by this permit.
- To avoid impacts on the downhill neighbors any buildings should be located as far up-hill as possible.
- DPD should assure all construction practices protect the slope.
- DPD should require construction bonding sufficient to repair any damages to neighboring properties resulting from project excavation and construction.
- "Clustering" of structures is not in keeping with the neighborhood's single-family character.
- California Lane is the only access to numerous properties past the subject site. Use of the lane for these properties is assured through a trust agreement established in the 1930's. Consequently, the permitted buildings and driveway locations and any construction activity should not restrict or block the lane.
- A small portion of a neighboring property is separated by the larger portion of this property by California Lane, hence appears to be a part of the subject site, but is not. Permitting should assure no work is proposed on this separated portion. Likewise, there is a portion of the applicant's property separated by California Lane that is Steep Slope and too small for any development, so should be designated as non-disturbance area.
- Any permission to build should be carefully conditioned because the applicant has a documented history of activity detrimental to the surrounding neighbors, such as dumping yard and construction debris down the slope, cutting trees on the site and blocking the allowed neighbor access on California Lane.
- Storm water vaults should be sized to assure flooding on site or further along the stormwater lines does not occur.
- Submitted documents show inaccuracies regarding lot size, amount of ECA area and possibly the location of proposed structures not on the project site, but neighboring properties. Also, the year 2000 survey should be considered an accurate depiction of current site conditions.
- The application cites a tree preservation plan, but no plan was in the project file.
- The submitted geo-technical reports cite the use of temporary shoring tie-backs under a neighboring property, but no easements to do these have been obtained.

ANALYSIS - ECA ADMINISTRATIVE CONDITIONAL USE (ACU) TO PERMIT CLUSTERED DEVELOPMENT

Environmentally Critical Areas Regulations

Seattle Municipal Code (SMC) Sections 25.09.015 and 25.09.060 establish applicability and standards for development within designated *Environmentally Critical Areas*. SMC Section 25.09.180 provides specific standards for all development on *steep slopes* and *steep slope buffers* on existing lots, including the general requirement that development shall be avoided in *steep slope* areas. The General requirements and standards described in Section 25.09.335 include the recording of a permanent covenant identifying the site's ECA areas, prohibits considering them for development credit in future plats or development proposals, and any permanent *Conditions of Approval*.

SMC 25.09.240. E, *Short Subdivisions and Subdivisions*, does not allow the inclusion of the area of ECA's and their buffers in calculating the number of lots, and hence dwelling units, that could be built on a larger parent parcel except through the Administrative Conditional Use (ACU) process of SMC 25.09.260. The ACU process allows flexibility in certain development standards (such as clustering of structures) to allow up to the same number of units on the lot as would be allowed if there were no ECA areas and seeks to minimize impacts on and intrusions into the ECA areas. The Director may approve, condition, or deny an application based upon a determination of whether the proposed recovery of development credit on the site meets the applicable criteria. The Director may approve, deny, or approve with conditions smaller than required lot sizes and yards (if future platting is anticipated) and / or more than one dwelling unit per lot if the proposal meets the applicable ACU criteria. But in no case can the Director allow more than the zone allowed number of lots or number of dwelling units than permitted by the underlying zoning. An ECA Administrative Conditional Use decision is a Type II decision, subject to the provisions of SMC 23.76, and is appealable to the City Hearing Examiner.

SMC 25.09.260.A. When the applicant demonstrates it is not practicable to comply with the requirements of Section 25.09.240.B considering the parcel as a whole, the applicant may apply for an administrative conditional use permit, authorized under Section 23.42.042, under this section to allow the Director to count environmentally critical areas and their buffers that would otherwise be excluded in calculating the maximum number of lots and units allowed on the parcel under Section 25.09.240.E.

There are two residential structures on the subject site and related driveway access, both partially in the steep slopes and buffers. Although SMC 25.09.240.B allows this existing footprint area to be used for new structures and access, these areas are very small and would not allow the construction of retaining wall / catchment wall structures that would provide site and slope stability under contemporary geo-technical engineering standards, provide safe and adequate site vehicle access or allow residential structures that are reasonably compatible with the surrounding area's residential development. Further, extending new development further down slope into the small central non-ECA portion of the site would locate new development closer to the site's western steep slope and buffer. The submitted geo-technical reports recommend locating new development away from this slope and buffer and closer to the up slope steep slope and buffer due to inherent instability of the down slope area. Based on these finding, the applicant's qualify for consideration under the ACU provisions of 25.09.260.B.

B. Standards. *The Director may approve an administrative conditional use for smaller than required lot sizes and yards, and/or more than one (1) dwelling unit per lot if the applicant demonstrates that the proposal meets the following standards:*

No lot with less than the zone required 7,200 square feet is proposed. Front and rear yards (minimum building setback distances from the front and rear property lines) are not being reduced. Two dwelling units are proposed on this one 22,763 sq. ft. parcel.

1. Environmental Impacts on Critical Areas.

- c. No development is on a steep slope area or its buffer unless the property being divided is predominantly characterized by steep slope areas, or unless approved by the Director under Section 25.09.180.B.2.a, b or c.*

The 22,763 square foot site is predominately *steep slope* and *buffer*. Together these elements comprise 14,948 square feet in area, or 66 percent of the lot. A triangle area of more than 660 sq. ft. and separated by California Lane is virtually unbuildable due to its size and its separation by the portion of California Lane that runs through the subject site.

- (1) The preference is to cluster units away from steep slope areas and buffers.*

The units (two separate single family structures) are clustered predominately on the footprint area of the two existing structures on the uphill portion of the site's more level central section but also extending into the uphill steep slope and buffer area per the geo-technical engineer's preference to locate any development toward the up-hill portion of the site and away from the downhill steep slope buffer. A small portion of proposed Residence "B" extends into the steep slope and buffer on the site's south end.

- f. The proposal does not result in unmitigated negative environmental impacts, including drainage and water quality, erosion, and slope stability on the identified environmentally critical area and its buffer.*

The proposal has been reviewed by DPD's drainage section for stormwater disposal and, after plan changes, approved. DPD's geo-technical engineer also reviewed the submitted geo-technical reports and after modifications to the original proposal Conditionally approves this proposal. See SEPA section below for project Condition.

2. General Environmental Impacts and Site Characteristics.

- a. The proposal keeps potential negative effects of the development on the undeveloped portion of the site to a minimum and preserves topographic features.*

The proposal is for construction in limited steep slope areas and the abutting buffers on the east and south portions of the site. These plans have been reviewed by DPD's geo-technical engineers to assure proper foundation, retaining wall, and drainage systems will be included to assure stable construction and stability of the remaining portions of the site. For example, the proposed foundation wall for Residence "A" in the steep slope will also serve as a slope retaining wall. Detailed building engineering and construction plans for the building permits will be reviewed by DPD geo-tech and structural reviewers to assure the criteria of this MUP and the ECA ordinance will be met.

Beyond the proposed areas of construction, no disturbance will be allowed except for a 2-foot area parallel to the proposed building foundations and driveway and driveway retaining walls for construction shoring and access. This will also allow maintenance access to the building perimeter in the future without disturbance of the remaining steep-slope areas. The requirement to maintain permanent non-disturbance areas is assured by the required recording of an approved ECA covenant per SMC 25.09.335.

The proposal largely preserves the topographic feature of the site. The proposed structures and access driveways will be located primarily on the site's substantially level, and previously developed middle section. The site's eastern side will retain its downhill slope from California Lane; it's western down-slope and buffer will remain as they are now. The proposed building siting essentially nestles the houses into the hill side.

b. The proposal retains and protects vegetation on designated non-disturbance areas, protects stands of mature trees, keeps tree removal to a minimum, removes noxious weeds and protects the visual continuity of vegetated areas and tree canopy.

The site is largely treeless with the exception of a group of trees (Acer macrophyllum, Big Leaf Maple) below and along California Lane at its northeast corner. Three of these would be removed for construction of Residence "A". The remaining trees are in the future non-disturbance area and will remain. As shown on Sheet 1 2.00, Landscape, eleven trees are proposed for planting along the northern property boundary. Note: The required planting and associated vegetation removal must conform to the Tree and Vegetation requirements of SMC 25.09.320.

3. Neighborhood Compatibility.

a. The total number of lots permitted on-site shall not be increased beyond that permitted by the underlying single-family zone.

The underlying SF 7200 zoning would allow up to 3 lots to be created from the 22,763 square foot site, and hence 3 single-family structures. This proposal is for 2 single-family structures. Future Unit Lot Subdivision is anticipated per SMC 23.24.045. Unit Lot Subdivision allows the dividing of the property into the number of unit lots that correspond to the number of units on it. Unit Lot Subdivision would create two unit lots, one less than the underlying zoning could allow for this size lot.

- c. *The development is reasonably compatible with and keeps the negative impact on the surrounding neighborhood to a minimum. This includes, but is not limited to, concerns such as neighborhood character, land use, design, height, bulk, scale, yards, pedestrian environment, and preservation of the tree canopy and other vegetation.*

The development proposes 2 single-family structures of a size and design typical for this style of building in the surrounding and similar single-family zones. The three story height of each structure will only be fully visible from the downhill side of the lot. From California Lane the structures will appear to be one to two stories. From side views, it will become apparent that the California Lane facades are the upper levels. Each structure would conform to the height restrictions of the SF 7200 zone. Two-car garages are provided. Front, side and rear yards ("setbacks") are provided with the exception of the space between the proposed structures, where a typical 10-foot building separation is required, there will be approximately 9-feet eave to eave. Pedestrian access will be provided on the proposed access driveway.

Trees canopy will be maintained per 2.b above. Landscaping will be installed per Sheet L 2.00 of the approved plans.

As sited and designed, the structures will be compatible with the eclectic variety of existing single-family structures in the surrounding neighborhood. No negative impacts on neighborhood character are anticipated from this proposal.

C. Conditions.

1. *In authorizing an administrative conditional use, the Director may mitigate adverse negative impacts by imposing requirements and conditions necessary to protect riparian corridors, wetlands and their buffers, shoreline habitats and their buffers, and steep slope areas and their buffers, and to protect other properties in the zone or vicinity in which the property is located.*

The project and accompanying geo-technical report were reviewed by DPD's geotechnical engineer and, following the submittal of additional information, the proposal will not have adverse impacts on the site's *steep slopes* and *buffers* or other properties in the surrounding zone or vicinity. Other project Conditions, as outlined in this document have been imposed to protect trees and vegetation and assure long-term slope stability.

2. *In addition to any conditions imposed under subsection 1, the following conditions apply to all administrative conditional uses approved under this subsection:*
 - a. *Replacement and establishment of native vegetation shall be required where it is not possible to save trees or vegetation.*

Three trees are proposed for removal as described above. The remaining trees on site will remain. New trees and vegetation are proposed, all native. Three "islands" of a variety of predominately low plantings will be between the structures and California Lane, with one on the south side of Residence "B" (the southern structure). Native trees will be planted along the north property line.

- b. Where new lots are created, the provisions of Section 23.22.062, Unit lot subdivisions, or Section 23.24.045, Unit lot subdivisions, apply, regardless of whether the proposal is a unit lot subdivision, so that subsequent development on a single lot does not result in the development standards of this chapter being exceeded for the short subdivision or subdivision as a whole.*

Unit lot subdivision for the separate sale of the proposed two structures is anticipated. SMC 23.24.045, Unit Lot Subdivision, notes that the unit lot subdivision of a lot approved and in conformance with development standards at the time of the (building) permit application (and in conformance with any applicable MUP approvals, such as this ACU application) may become nonconforming based on an analysis of the subsequent individual unit lot, and therefore any subsequent platting actions, additions, or modifications to the structures may not create or increase any nonconformity of the parent lot. Further this section requires a note on the recorded plat stating that the unit lots are not separate buildable lots, and that additional development of the individual unit lots may be limited as a result of the application of the development standards to the parent lot. Further, any development of any non-disturbance tract (if created instead of a non-disturbance area) will be prohibited by the terms of the ECA permanent covenant as required by SMC 25.09.335 for non-disturbance tracts or areas and noted above.

DECISION – ADMINISTRATIVE CONDITIONAL USE

The proposal to recover development credit is **CONDITIONALLY APPROVED.**

ANALYSIS - SEPA

The initial disclosure of the potential impacts from this project was made in the environmental checklist dated July 14, 2008. This information, along with the experience of the lead agency in similar situations, forms the basis for this analysis and decision. Short- and long-term adverse impacts could be anticipated from the proposal.

The SEPA Overview Policy (SMC 25.05.665.D) clarifies the relationship between codes, policies, and environmental review. Specific policies for each element of the environment, certain neighborhood plans and other policies explicitly referenced may serve as the basis for exercising SEPA authority. The Overview Policy states “where City regulations have been adopted to address an environmental impact, it shall be presumed that such regulations are adequate to achieve sufficient mitigation,” subject to limitations. Further, under SMC Section 25.05.908 B, the scope of environmental review within critical areas is limited to documenting that the proposal is consistent with ECA regulations, SMC Chapter 25.09, and to evaluating potentially significant impacts on the environmentally critical areas resources not adequately addressed in the ECA Policies or the requirements of Chapter 25.09.

The proposal, as conditioned by this decision, is determined to be consistent with ECA regulations. In addition, several adopted City codes and/or ordinances provide mitigation for some of the identified impacts. Specifically these are: the Stormwater, Grading and Drainage Control Code (regulating the control of storm water and soil erosion during and after construction); and the Building Code (construction standards for retaining walls and foundations in *steep slope* areas). Compliance with these codes and ordinances will be adequate to achieve sufficient mitigation of identified adverse impacts. However, under certain limitations or circumstances mitigation can be considered (SMC 25.05.665.d); therefore, a more detailed discussion of some of the impacts is appropriate.

Short-term Impacts

The following temporary or construction-related impacts are expected: slope stability, increased soil erosion during general site work, increased runoff, and increase in greenhouse gas emissions. Mitigation of potential adverse impacts is discussed below. However, due to the temporary nature and limited scope of these impacts, they are not considered significant (SMC Section 25.05.794).

Earth (slope stability) and Erosion

There is a potential for erosion during grading and excavation for foundations and structures, access driveways, and clearing of non-native vegetation and replacement with native vegetation and /or native trees in portions of all *steep slope buffer* and *steep slope* areas. Erosion potential can increase if grading and excavation is done during the rainy winter months. SMC 25.09.060 G requires grading to be completed or stabilized by October 31st. However, the Director may allow work to continue if approved geo-technical analysis demonstrates no environmental harm or safety problems would occur if it were continued. The applicant will be required to follow the recommendations of the soils engineer in concurrence with the DPD geo-tech reviewer and the regulations of SMC 25.09. Pursuant to these proposals, and by complying with the requirements of Director's Rule 3-93 and 16-00 (the latter for implementation of Best Management Practices) and Environmentally Critical Areas requirements, no additional mitigation is necessary.

Long-term Impacts

Long-term or use-related impacts could be anticipated from the proposal: increased surface water runoff from greater site coverage by increased impervious surfaces, inadequate stormwater flow control and detention from site generated stormwater, and possible soil instability from the increased development area or building construction techniques, and possible increase in greenhouse gas emissions. Mitigation of potential adverse impacts is discussed below. Based on existing City regulations (the Stormwater, Grading and Drainage Control Code, Building Code requirements and ECA regulations), required geo-technical practices for construction in a steep slope area, and the required Condition below, these long-term impacts are not expected to be significant.

The expected long-term impacts are typical of development of single family residential structures in a *steep slope* and are expected to be mitigated by the City's adopted codes and/or ordinances, practices, and site-specific requirements. In response to DPD geo-technical and drainage reviewer requirements, the original application was updated to show the proposed drainage collection system for building footings, impervious surfaces, the related detention system and connections to the City storm water system: on site infiltration is not viable. The project proposes a detention vault connected to a lift station for pumping uphill to a connection with the existing line in California Lane and then to the line in California Way. The proposed system would include a second pump for back up and an emergency power generator in the event of a power failure. The City finds the proposed system as adequate pending review and approval of full plans and specifications during building permit application and Conditionally approves it with the requirement that the proposed emergency generator be permanently installed and operate automatically in the event of a City power failure. Consequently, no SEPA mitigation is warranted.

DECISION - SEPA

This decision was made after review by the responsible official on behalf of the lead agency of a completed environmental checklist and other information on file with the responsible department. This constitutes the Threshold Determination and form. The intent of this declaration is to satisfy the requirement of the State Environmental Policy Act (RCW 43.21.C), including the requirement to inform the public of agency decisions pursuant to SEPA.

- [X] Determination of Non-Significance. This proposal has been determined to not have a significant adverse impact upon the environment. An EIS is not required under RCW 43.21C.030 (2) (C).
- [] Determination of Significance. This proposal has or may have a significant adverse impact upon the environment. An EIS is required under RCW 43.21C.030 (2) (C).

REQUIREMENTS AND CONDITIONS - ECA ADMINISTRATIVE CONDITIONAL USE TO RECOVER DEVELOPMENT CREDIT AND PERMIT CLUSTERED DEVELOPMENT:

Requirements

1. Per SMC 25.09.335 submit a signed copy of the DPD supplied covenant that restricts development to the non-ECA *steep slope* and *buffer* areas and limited *steep slope* and *buffer* areas approved for development and designated on the site plan (Sheets A 1.00 and A 1.00a, dated January 15, 2009). The covenant shall include a copy of this Sheet A 1.00a with those ECA *steep slope* and *buffer* areas not approved for development labeled "non-disturbance areas". The covenant shall run with the land and any future subdivision. The covenant shall be in the form given to the applicant by DPD, reviewed and approved by DPD, and recorded prior to the issuance of any permit.

2. Comply with all General Development Standards of SMC 25.09.060 as applicable.
3. Embed all ***Requirements*** and ***Conditions*** in the cover sheet for the MUP permit and for all subsequent permits including updated MUP plans, and all building permit drawings.
4. Update plan set #2 to reflect red-line notations on plan set #1, including the removal of "Parcel A" and "Parcel B".

Conditions

Prior to Issuance of the MUP Permit

1. Record the ECA covenant required under SMC 25.09.335 after review and approval by the DPD MUP geo-tech and planner.

Prior to Issuance of Any Construction Permits

2. The site and landscaping plans shown in the building permit plans must be reviewed and approved by the project planner to verify conformance with the approved MUP design.
3. On the building permit site plan show the location of the highly visible and durable protective barriers delineating the tree protection areas for the Big Leaf maple trees that cannot be removed and shown on Sheet A 1.00 of the approved MUP plans that are along the area of grading and / or excavation for retaining walls, foundations, and structures. (See SMC 25.11.050.B, Exhibit for details).

During Site Work and Construction

4. Have installed and maintain the highly visible and durable protective barrier delineating the tree protection area for the Big Leaf maple trees shown on Sheet A 1.00 of the approved MUP plans. (See SMC 25.11.050.B, Exhibit for details).

Prior to Final Approval of any Building Permits

5. Install the planting and trees as shown on Sheet L 2.00 (dated October 29, 2008) according to the requirements of the General Development Standards of SMC 25.09.060, CAM's 331 Tree and Vegetation Overview, and 331 A, ECA Vegetation Restoration.
6. Install permanent markers per the locations shown in the recorded ECA covenant.

CONDITIONS - SEPA

Prior to Issuance of any Building Permits

7. On the construction plans show the approved emergency generator for the sanitary sewer and storm water lift system for both structures.

Prior to Final Approval of any Building Permits

8. The emergency generator for the sanitary sewer and storm water lift system for both structures shall be permanently installed to automatically operate in the event of a City power failure.

Signature: (signature on file)
Jerry Suder, Land Use Planner
Department of Planning and Development

Date: March 5, 2012